

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FIREMAN’S FUND INSURANCE COMPANY,

Plaintiff,

v.

ONEBEACON INSURANCE COMPANY,

Defendant.

Case No. 14-cv-4718 (PGG)
ECF Case

**DECLARATION OF KAREN C. BASWELL IN SUPPORT OF
PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT**

I, Karen C. Baswell, declare as follows:

1. I am an attorney at the law firm of Chaffetz Lindsey, 505 Fifth Avenue, 4th Floor, New York, New York (“Chaffetz Lindsey”). I am admitted to practice in the State of New York and in the United States District Court for the Southern District of New York.

2. I submit this Declaration in support of Plaintiff Fireman’s Fund Insurance Company’s (“FFIC” or “Fireman’s Fund”) Motion for Summary Judgment. I am familiar with the facts stated herein.

3. Attached as Exhibit 1 is a true and correct copy of the Complaint dated June 26, 2014, filed by FFIC in this action.

4. Attached as Exhibit 2 is a true and correct copy of the Answer and Affirmative Defenses dated August 11, 2014, filed by Defendant OneBeacon Insurance Company (“OneBeacon”) in this action.

5. Attached as Exhibit 3 is a true and correct copy of the cited excerpts from the Deposition of Gary Ibello, dated April 1, 2015 (“Ibello Dep.”).

6. Attached as Exhibit 4 is a true and correct copy of the cited excerpts from the Deposition of Jeffrey A. Svestka, dated April 2, 2015 (“Svestka Dep.”).

7. Attached as Exhibit 5 is a true and correct copy of the cited excerpts from the Deposition of Erik Jepsen, dated April 8, 2015 (“Jepsen Dep.”).

8. Attached as Exhibit 6 is a true and correct copy of the cited excerpts from the Deposition of Madelyn Fagella, dated April 10, 2015 (“Faggella Dep.”).

9. Attached as Exhibit 7 is a true and correct copy of FFIC Policy No. XLX 1481698, issued to Asarco Inc. (“ASARCO”) (“Policy 1”).

10. Attached as Exhibit 8 is a true and correct copy of FFIC Policy No. 1534773, issued to ASARCO (“Policy 2”).

11. Attached as Exhibit 9 is a true and correct copy of FFIC Policy No. 1534774, issued to ASARCO (“Policy 3”).

12. Attached as Exhibit 10 is a true and correct copy of FFIC’s Blanket Excess Liability Policy Form 5902-2-72.

13. Attached as Exhibit 11 is a true and correct copy of the Broker Covernote dated March 22, 1983, sent from G.L. Hodson & Son, Inc. to FFIC.

14. Attached as Exhibit 12 is a true and correct copy of Certificate of Facultative Reinsurance No. FC 4620, issued to FFIC by General Accident Insurance Company of America (the “Facultative Certificate”).

15. Attached as Exhibit 13 is a true and correct copy of ASARCO’s Original Petition, filed in *ASARCO LLC, et al. v. Allstate Insurance Company, et al.*, Cause No. 01-2680-D (105th Jud. Dist. Nueces County, Tex.), *sub nom ASARCO LLC, et al. v. Fireman’s Fund Insurance Company, et al.*, dated May 21, 2001.

16. Attached as Exhibit 14 is a true and correct copy of ASARCO's Ninth Amended Petition, filed in *ASARCO LLC, et al. v. Fireman's Fund Insurance Company, et al.*, Cause No. 01-2680-D (105th Jud. Dist. Nueces County, Tex.), dated July 1, 2008.

17. Attached as Exhibit 15 is a true and correct copy of Fireman's Fund's Original Answer, filed in *ASARCO LLC, et al. v. Allstate Insurance Company, et al.*, Cause No. 01-2680-D (105th Jud. Dist. Nueces County, Tex.), dated August 7, 2001.

18. Attached as Exhibit 16 is a true and correct copy of Fireman's Fund's Third Amended Answer, Defenses, Special Exceptions and Counter-Claim for Declaratory Relief, filed in *ASARCO LLC, et al. v. Fireman's Fund Insurance Company, et al.*, Cause No. 01-2680-D (105th Jud. Dist. Nueces County, Tex.), dated July 21, 2008.

19. Attached as Exhibit 17 is a true and correct copy of Fireman's Fund's Motion for Summary Judgment as to Choice of Law, filed in *ASARCO LLC, et al. v. Allstate Insurance Company, et al.*, Cause No. 01-2680-D (105th Jud. Dist. Nueces County, Tex.), dated December 22, 2003.

20. Attached as Exhibit 18 is a true and correct copy of the Order dated May 27, 2004, entered in *ASARCO LLC, et al. v. Fireman's Fund Insurance Company, et al.*, Cause No. 01-2680-D (105th Jud. Dist. Nueces County, Tex.), ruling on Fireman's Fund Motion for Summary Judgment as to Choice of Law.

21. Attached as Exhibit 19 is a true and correct copy of Plaintiff's Motion for Partial Summary Judgment as to Fireman's Fund's Asbestosis Exclusion, filed in *ASARCO LLC, et al. v. Allstate Insurance Company, et al.*, Cause No. 01-2680-D (105th Jud. Dist. Nueces County, Tex.), dated December 22, 2003.

22. Attached as Exhibit 20 is a true and correct copy of FFIC's Informational CCR

dated July 2, 2004.

23. Attached as Exhibit 21 is a true and correct copy of ASARCO's Voluntary Petition filed with the United States Bankruptcy Court for the Southern District of Texas, dated August 9, 2005

24. Attached as Exhibit 22 is a true and correct copy of the Memorandum Opinion, Order of Confirmation, and Injunction dated Nov. 13, 2009, entered in *In re ASARCO LLC, et al.*, Case No. 09-cv-177 (S.D. Tex.).

25. Attached as Exhibit 23 is a true and correct copy of ASARCO Incorporated and Americas Mining Corporation's Seventh Amended Plan of Reorganization for the Debtors Under Chapter 11 of the United States Bankruptcy Code, as Modified on August 20, 2009, August 23, 2009, and August 27, 2009, filed in *In re ASARCO LLC, et al.*, Case No. 05-21207 (Bankr. S.D. Tex.).

26. Attached as Exhibit 24 is a true and correct copy of the Asbestos Personal Injury Settlement Trust Agreement, dated November 30, 2009, as filed in *In re ASARCO LLC, et al.*, Case No. 09-cv-177 (S.D. Tex.).

27. Attached as Exhibit 25 is a true and correct copy of Plaintiff's Motion for Partial Summary Judgment as to Fireman's Fund's Asbestosis Exclusion, filed in *ASARCO LLC, et al. v. Fireman's Fund Insurance Company, et al.*, Cause No. 01-2680-D (105th Jud. Dist. Nueces County, Tex.), dated April 30, 2008.

28. Attached as Exhibit 26 is a true and correct copy of Fireman's Fund's Motion to Reconsider Prior Order for Summary Judgment as to Choice of Law, filed in *ASARCO LLC, et al. v. Fireman's Fund Insurance Company, et al.*, Cause No. 01-2680-D (105th Jud. Dist. Nueces County, Tex.), dated October 14, 2008.

29. Attached as Exhibit 27 is a true and correct copy of the Order dated October 31, 2008, entered in *ASARCO LLC, et al. v. Fireman's Fund Insurance Company, et al.*, Cause No. 01-2680-D (105th Jud. Dist. Nueces County, Tex.), ruling on FFIC's Motion to Reconsider.

30. Attached as Exhibit 28 is a true and correct copy of the Order Granting Plaintiff's Motion for Partial Summary Judgment on Fireman's Fund's Asbestosis Exclusion, dated March 11, 2009, entered in *ASARCO LLC, et al. v. Fireman's Fund Insurance Company, et al.*, Cause No. 01-2680-D (105th Jud. Dist. Nueces County, Tex.).

31. Attached as Exhibit 29 is a true and correct copy of Fireman's Fund's Motion for Partial Summary Judgment Seeking a Ruling That It Has No Obligation to Reimburse Plaintiffs for Defense Costs, filed in *ASARCO LLC, et al. v. Fireman's Fund Insurance Company, et al.*, Cause No. 01-2680-D (105th Jud. Dist. Nueces County, Tex.), dated April 21, 2009.

32. Attached as Exhibit 30 is a true and correct copy of the relevant excerpts from the Transcript of Pre-Trial Motions in *ASARCO LLC, et al. v. Fireman's Fund Insurance Company, et al.*, Cause No. 01-2680-D (105th Jud. Dist. Nueces County, Tex.), dated June 19, 2009.

33. Attached as Exhibit 31 is a true and correct copy of Fireman's Fund's Confidential Mediation Statement dated July 29, 2008 ("FFIC 2008 MS"), as sent to David Geronemus by letter dated July 30, 2008.

34. Attached as Exhibit 32 is a true and correct copy of ASARCO's Confidential Settlement Mediation Statement dated July 29, 2008 ("ASARCO 2008 MS").

35. Attached as Exhibit 33 is a true and correct copy of the Summary of August 5 and 6 Mediation, Memorandum from P. Connally to E. Billeter and D. Kane, dated August 8, 2008.

36. Attached as Exhibit 34 is a true and correct copy of FFIC's ASARCO Authority Request dated July 31, 2008 ("FFIC 2008 Authority Request").

37. Attached as Exhibit 35 is a true and correct copy of FFIC's Reserve Authority Analysis, Recommendation and Request dated November 25, 2009 ("FFIC 2009 Reserve Authority Analysis"), as attached to email from E. Billeter to G. Ibello, dated November 30, 2009, re: ASARCO Request for Reserve & Settlement Authority.

38. Attached as Exhibit 36 is a true and correct copy of FFIC Closing Report dated September 14, 2011 ("FFIC 2011 Closing Report"), as attached to email from D. Kane to CSS and J. Svestka, dated September 14, 2011, re: Closing report 80082797783.

39. Attached as Exhibit 37 is a true and correct copy of the Summary of April 19, 2010 ASARCO Negotiations, Memorandum from P. Connally to E. Billeter, dated April 20, 2010.

40. Attached as Exhibit 38 is a true and correct copy of the Settlement Agreement between the ASARCO Trust and FFIC, executed in June 2011.

41. Attached as Exhibit 39 is a true and correct copy of the Actuarial Documentation for Fireman's Fund Gross Ultimate Loss Estimate ("Actuarial Documentation").

42. Attached as Exhibit 40 is a true and correct copy of FFIC Invoice No. 66163 dated January 16, 2013.

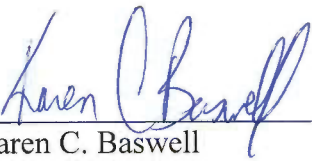
43. Attached as Exhibit 41 is a true and correct copy of FFIC Invoice No. 66172 dated January 16, 2013.

44. Attached as Exhibit 42 is a true and correct copy of the Letter from E. Jepsen to J. Svestka, dated April 18, 2014.

45. Attached as Exhibit 43 is a true and correct copy of FFIC's Special Settlement Request / Closing Report dated January 17, 2013.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
May 15, 2015



Karen C. Baswell